

Chapter 10

Restrictions

Although the Political Reform Act is primarily a disclosure law, there are several important restrictions and prohibitions on receiving contributions and spending campaign funds. This chapter reviews these restrictions and prohibitions, as well as some that are contained in laws other than the Political Reform Act. Committees should consult Elections Code Section 18680 for information relating to permissible expenditures, Section 18650 for use of petition signatures, and Section 18320 for use of websites and other restrictions. (See Appendix 1.)

Restrictions on Contributions

Laundered Funds

If a contribution of \$100 or more is received from a single source in a calendar year, the source must be identified on the committee's Form 460. If a contribution is received through an intermediary, both the intermediary and the true source of the contribution must be identified. If the information for both the true source and the intermediary is not provided, this is considered laundering, a serious violation of the Political Reform Act. Any laundered contributions must be paid to the Secretary of State for deposit in the state General Fund.

Example *Barry owns a music store and supports the Committee for Measure W. Since Barry was going to be out of town when the committee's fundraiser was held, he asked an employee of his to attend on behalf of the store. The employee attended the fundraiser using a personal check to pay \$100. Upon his return, Barry reimbursed the employee the \$100 with a company check. At the time the employee made the contribution to the committee, he informed them that Barry's music store was*

the true source of the funds. The committee's campaign report must itemize both Barry's store and the employee. The name of Barry's store and its address, along with the employee's name, address, occupation, and employer are reported.

Barry's employee attended another fundraiser for the Committee for Measure W, but this time Barry wrote a company check to the committee, which the employee used to attend the fundraiser. In this case, the committee's campaign report must only report Barry's store as the source of the contribution; the employee is not an intermediary.

Cash

The committee may not accept a cash contribution of \$100 or more. Such a contribution may be returned to the contributor prior to the end of the reporting period, provided the cash was not previously deposited or spent. A cash contribution that is inadvertently deposited into the campaign bank account must be refunded within 72 hours of receipt, except a cash contribution of \$1,000 or more from a single source made during the late contribution reporting period (the last 16 days before the election) must be returned to the contributor within 48 hours of receipt.

Anonymous

Anonymous contributions of \$100 or more are prohibited. If the committee receives a cash contribution of \$100 or more from an unknown source, it must be sent to the Secretary of State for deposit in the state's General Fund.

Commingling

Campaign funds may not be commingled with an individual's personal funds and may not be used for personal expenses.

Campaign funds must be kept in an account separate from any account that contains personal funds.

Money Orders/Cashier's Checks/Traveler's Cheques

All monetary contributions of \$100 or more must be made by written instrument (such as a check) containing the name of the donor and drawn from the account of the donor or the intermediary. Contributions of \$100 or more made by money order, cashier's check, or traveler's cheque are prohibited and must be returned to the contributor, or, if made anonymously, sent to the Secretary of State for deposit in the state's General Fund.

Contributions may be received by credit card (including over the Internet), wire transfer, or other electronic means. (See Chapter 2.)

Legal Name

Contributions must be made in the name by which the contributor is identified for legal purposes.

Delivered in State Office Buildings

A contribution may not be received, or delivered to another person, personally or through an agent in the State Capitol or any other state office building for which the State of California pays the majority of the rent.

This prohibition does not apply to contributions received or delivered in a legislative district office or through the mail.

Contribution Limits

A state appeals court issued a ruling in May 2005 stating that the Fair Political Practices Commission regulation which placed contribution limits on state candidate-controlled ballot measure committees is

currently subject to a Superior Court injunction. As a result, the FPPC is prohibited from administering and enforcing the limits while its appeal of the injunction is pending.

Exception: Contributions to a state candidate controlled ballot measure committee from another state candidate controlled committee are subject to limits. In addition, contribution limits may apply if a committee, at the behest of a state candidate, makes a payment of \$50,000 or more for a communication featuring the state candidate 45 days before his or her election. Contact the FPPC for assistance.

Contributions From Foreign Governments or Principals

Committees are prohibited from soliciting or accepting contributions from a foreign government or foreign principal in connection with the qualification or support of, or opposition to, any state or local ballot measure.

For purposes of this prohibition, a "foreign principal" includes:

- A foreign political party;
- A person outside the United States, unless either of the following is established:
 - The person is an individual and a citizen of the United States; or
 - The person is not an individual and is organized under or created by the laws of the United States or of any state or other place subject to the jurisdiction of the United States and has its principal place of business within the United States;
- A partnership, association, corporation, organization, or other combination of persons organized under the laws of or having its principal place of business in a foreign country; or

- A domestic subsidiary of a foreign corporation if the decision to contribute or expend funds is made by an officer, director, or management employee of the foreign corporation who is neither a citizen of the United States nor a lawfully-admitted permanent resident of the United States.

Contributions, expenditures, or independent expenditures made by a lawfully-admitted permanent resident of the United States are permitted.

Misuse of Public Resources

The Political Reform Act prohibits public financing of campaigns, except for elections in charter cities and counties.

In addition, laws outside the Act prohibit the use of public resources, such as office equipment, staff time, etc., for campaign or personal purposes. (Education Code Section 7054; Gov. Code Section 8314; Penal Code Section 426.)

Government Code Section 54964 restricts an officer, employee, or consultant of a local agency from expending or authorizing the expenditure of any local agency funds to support or oppose a ballot measure or a candidate.

Answering Your Question

- Q. *May school districts contribute money or staff time to support school bond measures?*
- A. The Political Reform Act does not prohibit the use of public resources to support a school bond measure. However, California Government Code Section 8314 and Education Code Section 7054 may restrict the use of public funds and resources. To determine if such payments are permitted, contact the Attorney General's office. A school district that does contribute money or

staff time may become a "committee" and have reporting obligations.

For further information on laws outside the Act, contact the Attorney General's office at (800) 952-5225 or your district attorney.

Use of Campaign Funds

To ensure that campaign funds are not used for personal benefit, the expenditure of campaign funds must be *reasonably* related to a *political, legislative, or governmental* purpose. An expenditure must be *directly* related to a political, legislative, or governmental purpose if it confers a substantial personal benefit on any individual authorized to approve campaign expenditures, the controlling candidate, or the state ballot measure proponent, if applicable. As noted earlier, committees should also consult the Elections Code for additional restrictions on use of campaign funds. (See Appendix 1.)

(Examples) *The Thousand Oaks Residents for Libraries, A Committee for Proposition K, buys pizzas for its volunteers every Thursday when a group gathers to stuff envelopes for the campaign. This is allowed, since there is a **reasonably**-related political purpose for this expenditure.*

The treasurer of the committee has decided to enter an accounting certificate program at her local community college. While the program may enhance her qualifications as a treasurer, she may not use campaign funds for this purpose; a certificate would confer a personal benefit to her that is not considered directly related to a political, legislative, or governmental purpose.

The California Attorney General has concluded that with respect to surplus campaign funds held by a statewide ballot measure committee after an election, the committee may:

- (1) return the funds to contributors on a pro rata basis;
- (2) return the funds only to contributors of a specified minimum amount;
- (3) donate the funds to a nonprofit organization or a nonprofit, tax-exempt corporation;
- (4) contribute the funds to another ballot measure committee, to a candidate committee, or to a political party;
- (5) use the funds for educational or lobbying efforts with respect to the subject of the ballot measure, if the committee is established for purposes in addition to supporting the ballot measure; or
- (6) retain the funds for use in a future ballot measure campaign on the same or related subjects. (75 Ops.Cal.Atty.Gen. 29 (Opinion No. 91-504).)

Election Night Celebrations

Costs associated with election night celebrations or similar campaign events may be paid by the committee.

Attorneys' Fees

Generally, attorneys' fees and other costs related to administrative, civil, or criminal litigation may not be paid with campaign funds. However, there are exceptions. Some expenses that may be paid with campaign funds include:

- Action to halt defamation;
- Defense of an action to halt defamation;
- Defense of an action for violation of state or local campaign, disclosure, or election laws;
- Litigation to secure a place on the ballot or challenge the wording of the ballot pamphlet;
- Contest an election;
- Election recount; and

- Compliance expenses (for example, completing campaign disclosure reports).

Reimbursements

A volunteer, campaign worker, or any other individual may make expenses from personal funds and be reimbursed, as long as the expenses are incurred for political, legislative, or governmental purposes.

Example *A campaign volunteer buys a roll of stamps for the campaign at the post office using a personal check. In addition, he frequently buys bagels for the morning shift of volunteer workers. After providing the treasurer with a receipt for the stamps and bagels, the treasurer may reimburse the volunteer for his expenses.*

Automobile Expenses

Lease or Purchase

When making payments associated with leasing, purchasing, or operating a vehicle, such as insurance, maintenance, and repairs, the campaign committee must be the lessee or hold title to the vehicle. Additional titleholders may not be the controlling candidate, treasurer, or any other person who may approve campaign expenditures, or a member of any such person's immediate family (spouse or registered domestic partner and dependent children). Additional lessees may not be the controlling candidate, treasurer, or a member of any of these persons' immediate family.

Reimbursed Automobile Expenses

A controlling candidate, immediate family member, treasurer, and committee staff may be reimbursed by the committee for use of a personal vehicle if the use is directly related to a political, legislative, or governmental purpose. Documentation should be kept that includes the trip's purpose and mileage in a manner approved by the Internal Revenue Service for deducting mileage expenses.

The rate for reimbursement may not exceed that allowed under Internal Revenue Code Section 162. For more details, the Internal Revenue Service may be contacted at (800) 829-1040 (www.irs.gov).

Clothing

Clothing is a personal expense. The committee may NOT pay for an individual's business or casual clothing. Specialty clothing, such as formal wear, may be obtained with campaign funds if the use of such clothing is directly related to a political, legislative, or governmental purpose.

Contributions to Candidates and Other Committees

Campaign funds may be used to make contributions to candidates and other committees, subject to applicable contribution limits. However, if primarily formed ballot measure committees make contributions to candidates or other committees, they may qualify as a different kind of committee and be required to amend their Statements of Organization, Form 410. Call the FPPC for more information.

Donations

Campaign funds may be used to make donations or loans to bona fide charitable, educational, civic, religious, or similar tax-exempt, non-profit organizations. The donation or loan must be reasonably related to a political, legislative, or governmental purpose. In addition, the donation may not personally benefit the controlling candidate, committee treasurer, or any individual with authority to approve the expenditure of campaign funds, or any such person's immediate family member (spouse or registered domestic partner and dependent children).

Equipment and Appliances

Campaign funds may be used to buy, lease, or refurbish equipment or appliances, but

only if their use is directly related to a political, legislative, or governmental purpose. As with restrictions on vehicles, the committee must hold title, or be the lessee, on the equipment; no individual may be listed as owner or lessee.

Food

A campaign may pay for a meal when the expenditure is \$200 or less, as long as the expense is **reasonably** related to a political, legislative, or governmental purpose. However, if the aggregate cost of the meal is more than \$200, the expense must be **directly** related to one of these purposes.

Fines, Penalties, Judgments, and Settlements

Only the following fines, penalties, judgments, and settlements may be paid with campaign funds:

- Parking citations received while performing political, legislative, or governmental activities.
- Fines assessed in relation to situations in which the use of campaign funds to pay for an attorney is allowed (discussed above).
- Fines imposed for late filing of campaign statements.

Example *Your treasurer was two days late in filing the committee's first preelection statement and the Secretary of State has fined the committee \$20. The committee may pay the fine with campaign funds.*

Gifts

Unless **directly** related to a political, legislative, or governmental purpose, personal gifts may not be paid for from campaign funds. However, as long as no one individual receives a total of \$250 or more in a calendar year, gifts to campaign

employees or workers are permitted because they are considered directly related to a political, legislative, or governmental purpose. If the campaign pays for a gift to a member of the immediate family (spouse or registered domestic partner and dependent children) of a campaign employee or worker, it should be considered a gift to the employee or worker when calculating whether the \$250 per person limit has been met.

Health-Related Expenses

A committee may pay for health care benefits for its employees or independent contractors. However, no other health-related expenses may be paid with campaign funds; a committee may not, as an example, pay for any volunteer's health club dues, special dietary foods, or medical check-ups.

Loans

Campaign funds may be loaned to other political committees. Loans to state candidate committees are subject to limits. However, if primarily formed ballot measure committees make contributions to candidates or other committees, they may qualify as a different kind of committee and be required to amend their Statement of Organization, Form 410.

In addition, campaign funds may be used to make loans to bona fide charitable, educational, civic, religious, or similar tax-exempt, non-profit organizations. However, the loan may not personally benefit the controlling candidate, committee treasurer, or any individual with authority to approve the expenditure of campaign funds, or any such person's immediate family member (spouse or registered domestic partner and dependent children). The loan must be reasonably related to a political, legislative, or governmental purpose. Campaign funds may not be loaned to an individual or to an entity other than those described above.

Professional Services

When the committee reasonably requires the services of professionals, such as accountants or attorneys, their fees may be paid with campaign funds. (See below for restrictions on salary and compensation paid to a controlling candidate.)

Real Property

The committee may NOT purchase real property. It may, however, lease property for up to one year, as long as its use is directly related to a political, legislative, or governmental purpose. Neither the controlling candidate, committee treasurer, any individual with authority to approve the committee's expenditures, or an immediate family member (spouse or registered domestic partner and dependent children) of any of these persons may be a lessee or sublessor, or hold legal title to the leased property.

Refunding Contributions

The return of contributions to contributors is permitted.

Returning Contributions Lacking Contributor Information

When a contribution of \$100 or more in a calendar year is received from a single contributor, the committee must report the contributor's name and address, and, if the contributor is an individual, his or her occupation and employer. If the committee does not have this information in its records within 60 days of receipt, the contribution must be returned. (See Chapter 2.)

Salary and Compensation

The controlling candidate or any individual authorized to approve the committee's expenditures, may not receive a salary or other compensation from the committee for the performance of political, legislative, or governmental activities. The committee may

pay for professional services such as an accountant, however, even if the accountant has authority to sign committee checks.

Example *Paula Greene, a member of Senator Howard's staff, also is the treasurer of the Senator's state ballot measure committee. Ms. Greene does all recordkeeping for the committee and completes the committee's campaign reports. She also has authority to approve committee expenditures. Campaign funds may be used to pay Ms. Greene for services she provides as committee treasurer. Funds may not be used to supplement or pay her government salary.*

Tickets for Entertainment and Sporting Events

The committee may purchase entertainment and sporting event tickets for use by the controlling candidate or officer, director, employee, or staff of the committee, as long as attendance is **directly** related to a political, legislative, or governmental purpose.

Tickets to Political Fundraisers

A committee may purchase tickets to political fundraisers (subject to any applicable contribution limits) for the controlling candidate, or officer, director, employee, or staff of the committee. However, if primarily formed ballot measure committees make contributions to candidates or other committees, they may qualify as a different kind of committee and be required to amend their Statement of Organization, Form 410. Call the FPPC for more information.

Travel

A committee that pays for travel or accommodations for the controlling candidate, any individual with authority to approve the committee's expenditures, or employees or staff of the committee must

comply with the standards set by Internal Revenue Code Sections 162 and 274 (deduction of travel expenses for tax purposes). The Internal Revenue Service may be contacted at (800) 829-1040 or www.irs.gov for more information.

Airline Mileage Programs

Some airlines have mileage programs that allow individuals to earn free tickets or other awards. These mileage credits and awards belong to the individual traveler, not the committee. The committee is not required to report either the receipt of the mileage credit awards or the redemption of the credits.

Answering Your Questions

- Q. *I am the committee treasurer and make long distance campaign phone calls on my home phone. How may I pay for them?*
 - A. One method is to calculate the portion of the phone bill that is campaign related. Have the committee write a check for that portion directly to the phone company. Otherwise, you may pay for the bill with personal funds and subsequently request reimbursement from the committee treasurer by providing a copy of the bill.
- Q. *As a state ballot measure proponent, I often need to get a babysitter for those evenings that I am out campaigning. May I use campaign funds to pay a babysitter?*
 - A. You may use campaign funds to pay a babysitter, but only up to \$200 per event.
- Q. *As a state ballot measure proponent, I will be using my personal car to get around during the campaign. Is mileage considered a reportable contribution if I do not want to be reimbursed?*
 - A. No. Incidental use of your personal car for campaign purposes is not considered a contribution and is not reportable.

- Q. *May I use campaign funds to have an additional telephone line put in my home?*
- A. Yes, as long as the additional phone line is used for campaign purposes only. If, after the campaign, you choose to retain the additional phone line for personal purposes, you must pay the campaign what it would cost to install an additional line at that time.
- Q. *Is it permissible to have an agreement with an independent contractor (e.g., the campaign consultant) to pay additional money if we win the election?*
- A. Yes, under the Act you may make contingency agreements that the committee will not pay a contractor unless the election is won, or that the committee will pay an additional amount to the contractor if the committee is successful. The arrangement should be made part of the written contract.
- Q. *May we give bonuses to our campaign workers?*
- A. Yes, but in most cases, the bonuses would be considered gifts and must be limited to less than \$250 per calendar year.
- 84307 *Commingling with Personal Funds.*
84309 *Transmittal of Campaign Contributions in State Office Buildings.*
84607 *Prohibition Against Political or Campaign Use.*
85320 *Foreign Entities.*
89513 *Use of Campaign Funds for Specific Activities.*
89514 *Use of Campaign Funds for Attorney's Fees.*
89515 *Use of Campaign Funds for Donations and Loans.*
89516 *Use of Campaign Funds for Vehicle Expenses.*
89517 *Use of Campaign Funds for Real Property, Appliances or Equipment.*
89517.5 *Use of Campaign Funds for Security System.*
89518 *Use of Campaign Funds for Compensation.*

Title 2 Regulations

- 18229 *Inclusion of Registered Domestic Partners.*
18432.5 *Intermediary.*
18439 *Definition of "Personally Deliver."*
18570 *Return of Contributions with Insufficient Donor Information.*
18960 *Direct Personal Benefit Defined.*
18961 *Incidental Use.*

Authority

The following Government Code sections and Title 2 regulations provide authority for the preceding information in this chapter:

Government Code Sections

- 82025 *Expenditure.*
82029 *Immediate Family.*
82044 *Payment.*
84300 *Cash and In-Kind Contributions; Cash Expenditures.*
84301 *Contributions Made Under Legal Name.*
84302 *Contributions by Intermediary or Agent.*
84304 *Anonymous Contributions.*